

The 17th September, 1982

No. 9(1)82-6 Lab./8934.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s East India Cotton Mfg. Co. Ltd., Industrial Area, Faridabad :—

BE FORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 333/1978

between

SHRI KHEM SINGH, WORKMAN AND THE MANAGEMENT OF M/S EAST INDIA
COTTON MFG. CO. LTD., INDUSTRIAL AREA, FARIDABAD.

Present:—

Shri S. S. Gupta, for the workman.

Shri R. C. Sharma for the management.

AWARD

The State Government of Haryana referred the following dispute between the workman Shri Khem Singh, and the management of M/s East India Cotton Mfg. Co. Ltd., Industrial Area, Faridabad by order No. ID/FD/77/78/ 37675, dated 14th August, 1978, to this Tribunal for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of section 17 of the Industrial Disputes Act, 1947 :—

Whether the dismissal of Shri Khem Singh was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by my learned predecessor on 2nd February, 1979:—

- (1) Whether the domestic enquiry proceedings and the findings are fair and proper?
- (2) Whether termination of services of the workman was justified and in order?
- (3) If not, to what relief is he entitled

Issue No. 1:—

Was tried first and the same was decided in favour of the management by order dated 19th February, 1981. Parties led their evidence on Issue No. 2. My finding on Issue Nos. 2 and 3 is as under :—

Issue No. 2 & 3:—

The management did not give any additional evidence whereas the workman examined himself as WW-1 and also examined Shri Nazar Mohmad, Ex. President of Textile Mazdoor Union, as WW-2. Arguments were heard.

Representative for the management advanced arguments and cited 1955-II-LIJ-page 250 and page 548, 1959-I-LIJ-page 347. Learned representative for the workman advanced oral arguments and further made a request for written arguments but the same were not filed.

Shri Nazar Mohmad deposed that the concerned workman was cashier of the union. On 15th August, 1977, they celebrated the Independence Day in the office of the union. On this, some person of the management attacked them. They also resorted to stone throwing on them. They had also locked them inside the office. Three or four workers suffered injury. Police arrested them from the office and arrested 6-7 persons. Shri Khem Singh was deputed on behalf of the union to get those workers released on bail. In cross-examination, he replied that the Police arrested the assailant. The concerned workman deposed that he was cashier of the union at the time of termination of his service. He further corroborated the statement of Shri Nazar Mohmad. He further-

deposed that Shri Nazar Mohmad was one of the arrested workers. He had applied leave to get his companions released on bail. Poster Ex. WW-2/1 was published by the union. He had himself signed settlement Ex. WW-2/2. His service was terminated due to his union activities. In cross-examination he denied the suggestion that there was dispute between his union and B.M.S. union. He could not give cause of the dispute.

In this case, the workman was chargesheeted for his application to the General Manager of the management in which he wrote "on 15th August, 1977, the way in which our colleagues were attacked in your leadership in our office was not democratic. You also then implicated me and my other colleagues in false case by hob nobins with the police. You also implicated me in false case". The above language of the letter gave rise to a chargesheet against the concerned workman. The domestic enquiry was held which was proved by me proper. There is no doubt that Shri Nazar Mohmad and other were challaned in the case dated 15th August, 1977 under Section 506/ 48/49 I.P.C., but the concerned workman was not a accused. The case was also not found fit for trial and all the accused were discharged on the application of the S. H. O. as given in Ex. W-14. It was an admitted fact that the allegation of the workman against the General Manager were found incorrect. The workman was not an accused nor the General Manager had led mis-creants to the union office. The matter was taken as violation of discipline as a mis-conduct. The workman placed Ex. WW-2/2 on the file. It is a settlement under Section 18 (i) of the Industrial Disputes Act, 1947. The workman was one of the 18 signatories of settlement. There was no designation given against the names of first four persons. The workman was dismissed from service, *vide* Ex. M-27.

I have given a thoughtful consideration in the matter and find that the language of the leave application of the workman was insolent. He implicated the General Manager in incident of 15th August, 1977 which was incorrect. It was also not necessary for him while making application for leave to raise accusation against the General Manager. I find from the record that the workman remained suspended for a number of days and he lost his joy by dismissal but there was nothing to show that he had a bad past record. Considering the facts and circumstances of the case, my mind goes that the workman might have thought that he was also one of the accused in the case but the apprehension was found wrong later on. Therefore, I am inclind to convert the order of dismissal into that of discharge. Therefore, I pass my award that the order of dismissal of the concerned workman be treated as order of discharge. He was not entitled to any further relief.

M. C. BHARDWAJ,

Dated the 10th August, 1982.

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 910, dated the 25th August, 1982.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 6th October, 1982

No. 9(1)82-6Lab/9573.~ In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Om Weaving Factory, Bahalgarh Road, Sonepat :—

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 8 of 1977

between

SHRI KALI CHARAN, WORKMAN AND THE MANAGEMENT OF M/S OM WEAVING FACTORY,
BAHALGARH ROAD, SONEPAT

Present : No one from either side.

AWARD

This reference has been referred to this court by the hon'ble Governor,—*vide* his order No. ID/RK/137-K-77/15012, dated 21st April, 1977 under section 10(1) (c) of the I. D. Act for adjudication of the dispute existing between Shri Kali Charan, workman and the management of M/s Om Weaving Factory, Sonepat. The term of the reference was :—

Whether the termination of services of Shri Kali Charan was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance, filed their respective pleadings, on the basis of which, the following issues were framed :—

- (1) Whether the workman concerned was sanctioned sick leave from 2nd September, 1976 to 12th September, 1976 ?
- (2) If yes, whether he reported for duty to the management concerned on 13th September, 1976 and the latter declined to take him on duty ?
- (3) If yes, as per reference ?

The workman examined himself as his own witness and closed his case. The management examined Shri Prahlad Nath Bhatia, Factory Manager as their only witness and closed their case. My predecessor Shri B.R. Goel heard the arguments on 19th July, 1979 but did not pass any award. No request from any side was received for rehearing the arguments and I sent notices to the parties for 8th July, 1982 but none appeared. Again notices were sent for 10th August, 1982 but none of the parties appeared on this date of hearing also. Presuming that the parties are not interested in addressing their arguments I was left with no alternative but to decide the matter on the basis of evidence on the file and in accordance with the law and I decide the issues as under :—

Issue No. 1.—The workman deposed that he got sick leave from 2nd September, 1976 to 12th September, 1976 sanctioned on 3rd September, 1976 when the management had declined to sanction his leave for one day for 2nd September, 1976. He submitted his leave application to Shri Khacheru Supervisor who told him that his leave has been sanctioned. He further stated that the management declined to take him on duty on 13th September, 1976 and he made a complaint to the grievances committee but received no reply of that complaint. He further deposed that he did not receive any dues from the management. He served a notice of demand to the management Ex. W-3 but received no reply. He had never remained gainfully employed till that day. He was never required to submit his medical certificate of illness. In his cross-examination he admitted that applications Ex. M-2 and M-3 were made by him and bear his signatures. He had further stated that he was told that these applications had been rejected. He further stated that the copy of the complaint filed by him before the grievances committee was Ex. M-4. He has stated further that did not receive any treatment from Medical Officer during the period of leave.

The management witness had deposed that the workman never submitted any application other than applications Ex. M-2 and M-3 for grant of leave and the workman voluntarily absented himself from duty with effect from 8th September, 1976 without prior permission or sanction of leave and continued to do so till 23rd September, 1976 when his name was struck off the rolls as a result of his long continued absence. He tendered in evidence the correct copy Ex. M-7 of the relevant entries relating to the absence of the workman from the register of attendance brought by him on that day.

From the evidence of the parties it is obvious that the workman only applied for leave for 2nd September, 1976 to 4th September, 1976,—*vide* application Ex. M-2 and M-3. The applicant has not been able to establish that he made an application as has been alleged by him for leave from 2nd September, 1976 to 12th September, 1976 and the allegation of the workman is belied when he admitted his signatures on Ex. M-2 and M-3 and stated that he submitted these applications, then there was no need to make any other application for the same period. Therefore I am constrained to hold that the workman never applied for leave from 2nd September, 1976 to 12th September, 1976 and no question of sanctioning the same did arise. The issue is accordingly decided against the workman.

Issue No. 2.—In view of my findings on Issue No. 1 the allegation of the workman that he reported for duty on 13th September, 1976 is also not correct as he neither applied for leave upto 12th September, 1976 nor he pursued his complaint before the grievances committee and as per the evidence the same was filed after sending two three notices to the workman for intimating the dates fixed and asking him to represent his case but the letters were received unserved from the postal authorities. The grievances committee filed the complaint,—*vide* its letter Ex. M-15. It is also not correct that the management declined the workman to take him on duty on 13th September, 1976. This issue is also decided against the workman.

Issue No. 3.—It has been established that the workman remained unauthorisedly on leave from 8th September, 1976 to 23rd September, 1976 and the management struck off the name of the workman from the rolls

on account of his long continued absence. It has also been established that no dues were paid to the workman at the time of termination of his services nor any retrenchment compensation was paid. It has been well settled rule of law based on various decisions of the Court and there has been no inconsistency in the judgement so far. The ratio of decisions in all the cases namely Santosh Gupta's case, Sundera Money case, Delhi Cloth and General Mills *Versus* Shambunath and Mohan Lal *Versus* Bharat Electronics has been reaffirmed by the honourable Supreme Court in L. Robert D' Souza *Versus* The Executive Engineer, Southern Railway reported in 1982 Lab. I.C. page 811 which runs as under :—

"The definition of expression 'retrenchment' in S.2 (00) is so clear and 'unambiguous' that no external aids are necessary for its proper construction. Therefore, we adopt as binding the well settled position in law that if termination of service of a workman is brought about for any reason whatsoever, it would be 'retrenchment' except if the case falls within any of the excepted categories. i.e. (i) termination by way of punishment inflicted pursuant to disciplinary action (ii) voluntary retirement of the workman ; (iii) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ; (iv) termination of service on the ground of continued ill-health. Once the case does not fall in any of the excepted categories the termination of service even if it be according to automatic discharge from service under agreement would nevertheless be 'retrenchment' within the meaning of expression in Section 2(00). It must as a corollary follow that if the name of the workman is struck off the roll that itself would 'constitute retrenchment'."

The management has neither pleaded nor had proved that the workman was served with one month's notice or any retrenchment compensation was paid to him rather it has been established that no dues were paid to the workman at the time of termination of his services which are the mandatory requirements for a valid retrenchment under section 25F of the I.D. Act. The striking off the name of the workman from the roll amounts to retrenchment and the non-compliance of section 25F render the termination *void ab initio*. The normal rule is that the workman is entitled to reinstatement with continuity of service and with full back wages but the workman has not approached this court after 9th July, 1979 when arguments were first heard in the case by my predecessor nor the workman turned up in response to the notices sent to him nor he furnished his present address on which he could have been intimated if at all he had changed the address already supplied by him to this court. Under these circumstances it is hard to believe that the workman has not been gainfully employed during the period from 7th September, 1979 to date. On this ground I answer the reference and give my award that the workman is entitled to reinstatement with continuity of service but with 50% of his back wages. The reference is returned in the above terms.

Dated the 31st August, 1982.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 2086, dated 4th September, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1)82-PV-6 Lab./19574.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of The Rohtak Central Cooperative Bank Limited, Rohtak :—

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 194 of 1979

between

SHRI OM PARKASH, WORKMAN AND THE MANAGEMENT OF THE ROHTAK
CENTRAL COOPERATIVE BANK LIMITED, ROHTAK

Present :—

Shri S. N. Vats, for the workman.

Shri M. M. Kaushal, for the management.

AWARD

This reference has been referred to this Court by the Hon'ble Governor,—*vide* his order No. ID/RTK/85-75/45276, dated 24th October, 1979 under section 10 (I) (c) of the Industrial Disputes Act, for adjudication of the dispute existing between Shri Om Parkash, workman and the management of The Rohtak Central Cooperative Bank Limited, Rohtak. The term of the reference was:—

Whether the termination of services of Shri Om Parkash was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance, filed their respective pleadings, on the basis of which the following issues were framed:—

1. Whether the reference is bad in law on account of Preliminary objection?
2. Whether the termination of the services of the workman is justified and in order? If not, to what relief is he entitled?

The management examined Shri Mehtab Singh, Establishment Clerk as their only witness and closed their case. The workman examined himself as his only witness and closed his case. I heard the representatives of the parties and decide the issues as under.

Issue No. 1:—This issue was not pressed by the management during the course of arguments nor any evidence was led on this issue. The issue is accordingly decided against the management.

Issue No. 2:—The facts of the case are almost admitted on both sides. The workman was initially appointed,—*vide* order, dated 22nd December, 1976 which has been exhibited as Ex. MW-1/1. His appointment and posting order, dated 3rd January, 1977, is Ex. MW-1/4. The workman submitted his joining report Ex. MW-1/2 on 3rd January, 1977. He was relieved of his duties,—*vide* order Ex. MW-1/5 which is dated 1st July, 1977. After giving one day break he was again asked,—*vide* the same order to submit his joining report with effect from 4th July, 1977. In compliance of order Ex. MW-1/5 the workman gave his joining report Ex. MW-1/6. He was again relieved on 2nd January, 1978,—*vide* order Ex. MW-1/8 and submitted his joining report on 4th January, 1978 after availing one day break. He was again relieved on 1st July, 1978,—*vide* Ex. MW-1/11 but he was allowed to continue to work as clerk even after 3rd July, 1978 upto 31st July, 1978 or till a regular candidate was appointed which ever was earlier,—*vide* Ex. MW-1/12. From these letters it is proved that the workmen has remained in continuous service for more than 240 days in 12 calendar months. The management has contended that the workman was employed *ad hoc* basis and for the specified period and his services automatically came to an end on the expiry of the specified period and the management has not terminated, discharged dismissed or retrenched the services of the workman. The composite order by which the services of the workman stood automatically terminated on 31st July, 1978 embraces in itself the fact of termination. Retrenchment as defined in section 2 (00) has been given wide scope and brings in its fold any type of termination and even the fact of termination as has been held by various High Courts and is a settled rule of law laid down by the Supreme Court of India in its various judgements I do not agree with the management contention that why the composite order fixing the date for ending the services of the workman to an end is outside the purview of section 2 (00) and how the termination of services of the workman without observing and fulfilling the conditions of section 25 F is justified and in order. Section 25 J deals with the effect of laws inconsistent with chapter V-A lays down that the provisions of this chapter shall have effect notwithstanding anything inconsistent therewith contained in any other laws and the rights and liabilities of employers and workmen in so far as these relate to lay off and retrenchment shall be determined in accordance with the provisions of this chapter. When it has been held that the termination of the workman by way of the composite order is also retrenchment then the non-compliance of section 25 F (b) which is a mandatory provision renders the termination void and inoperative *ab initio* and the relationship of employer and employee never existed. Any clause providing for termination of services of any employee may be an *ad hoc* employee of the common cadre rules applicable to the bank employees in consistent with the provisions of section 25 F (b) is a nullity and the provisions of section 25 F (b) shall prevail. The fact of non-payment of retrenchment compensation has been admitted by the management witness in his cross examination to which the workman was entitled under section 25 F (b) as he had completed 240 days of continuous service as per the requirement and in terms of the provisions of section 25 B as the breaks in service of the workman were not due to any fault on the part of the workman. The order of termination is therefore neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

Dated the 31st August, 1982.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endst. No. 2087, Dated 4th September, 1982.

Forwarded (four copies) to the secretary to Govt. Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I. D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.